

**clarkhill com**

The Complaint in this matter falsely alleges that the Respondents "appear to be making illegal conduit contributions" to the Federal Committee from the State Committee through the campaigns of Georgia state legislators and through Loudermilk's wife, Desiree. The Complaint alleges that such "conduit contributions" violate the Act's prohibition on federal candidates and officeholders transferring or spending nonfederal funds in connection with an election and the

August 7, 2017

Page 2

prohibition against making and accepting contributions in the name of another. Furthermore, the Complaint alleges that by making these "apparent conduit contributions," Loudermilk violated the ban on spending nonfederal funds in connection with an election because the State Committee is allowed to accept corporate contributions. The Complaint's basis for the allegations appears to be the financial reports of the various campaigns. The Complaint provides no evidence of any communications between Loudermilk and the state campaigns that would substantiate its allegations, and is certainly not based on any personal knowledge of these transactions. The Complaint also alleges that the State Committee "appears to be making personal use of campaign funds" because of payments made to Mrs. Loudermilk, notwithstanding the fact that Mrs. Loudermilk has provided administrative services to the State Committee for years.

The Complaint's allegations are specious and conclusory, and are unsupported by law or facts. Moreover, the allegation regarding personal use of the State Committee's funds is beyond the Commission's jurisdiction. As such, the Complaint should be immediately dismissed.

***The State Committee Has Not Made Illegal Transfers to Loudermilk for Congress***

As evidence for its allegation that the Respondents have made "illegal conduit contributions," the Complaint cites to a series of contributions from the State Committee and the Federal Committee to the campaigns of local state candidates. For example, the Complaint cites a \$500 contribution to the Federal Committee from the campaign of Ed Setzler, a candidate for the Georgia House of Representative, and a subsequent contribution from the Federal Committee to Setzler's campaign made seven months later as evidence of an "illegal" conduit contribution. To call contributions made seven months apart conduit contributions without any other evidence of an agreement between the committees is beyond tenuous. Even the contribution made within a shorter time frame, e.g., the contribution from the State Committee to Tippins for State Senate and the subsequent contribution by Tippins for State Senate to the Federal Committee does not constitute evidence of an orchestrated "scheme" to transfer funds from the State Committee to the Federal Committee.

Other examples of supposed conduit contributions the Complaint cites do not involve an actual conduit. A conduit is a person who receives and forwards an earmarked contribution to a candidate's authorized committee.<sup>1</sup> Here, Complainant alleges that a contribution made from the personal funds of Thomas Schultz on May 31, 2013 in the amount of \$250, and a separate \$250 contribution made by the State Committee to Schultz's campaign seven months later was a "conduit contribution" from the State Committee to the Federal Committee. Schultz's State Committee did not contribute to the Federal Committee, and as such, could not have served as a conduit. In an even more dubious example, the Complaint alleges that the wife of a state candidate who made a contribution to the Federal Committee served as a conduit because her husband's state committee received a contribution from Loudermilk's State Committee. Likewise, the contribution from Loudermilk's State Committee to Buddy Carter for Congress could not have been a conduit contribution because Buddy Carter for Congress never contributed

---

<sup>1</sup> 11 C.F.R. § 110.6(b).

August 7, 2017

Page 3

to Loudermilk's Federal Committee. These examples, on their face, fail to constitute a violation of the Act.

The Complaint essentially alleges these contributions were nothing more than transfers from the State Committee to the Federal Committee through intermediaries, and as such, Respondents made and accepted contributions in the name of another in violation of 52 U.S.C. § 30122. However, the Complaint provides no evidence of any "scheme" amongst the Respondents or any evidence that the contributions were "earmarked" in some way. A contribution is earmarked when there is "a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee."<sup>2</sup> In the past, the Commission has determined that contributions were earmarked where there was clear documentary evidence demonstrating a designation or instruction by the donor.<sup>3</sup> Moreover, the Commission has rejected earmarking claims even where the timing of the contribution at issue appeared to be a significant factor, but the contributions lacked a clear designation or instruction.<sup>4</sup>

The Complaint provides no evidence of any "designations, instructions, or encumbrances" required to show the contributions were earmarked or intended to be conduit contributions. Moreover, neither Loudermilk nor the State and Federal Committees made any express or implied, or written or oral instructions or designations to the local officeholders when the State Committee made the contributions. The Complaint's only basis for the allegations appears to be the timing of when the contributions were made and, in some cases, the amounts of the contributions. This is not enough to find a "factual nexus between the transactions to conclude that the State Committee was impermissibly funneling its funds to the Federal Committee," or that Respondents made and accepted contributions in the name of another.

Moreover, it is common for likeminded federal and state candidates and officeholders to make contributions to each other's campaigns, and the Supreme Court has made clear that "government regulation may not target the general gratitude a candidate may feel toward those who support him or his allies." *McCutcheon v. Federal Election Comm'n*, 134 S.Ct. 1434, 1441 (2014) (citing *Citizens United v. Federal Election Comm'n*, 558 U. S. 310, 360 (2010)). In this case, it is hardly suspicious and certainly not illegal for former colleagues in the Georgia legislature or in other state offices to support each other's campaigns. As such, the Commission

<sup>2</sup> 11 CFR § 110.6(b).

<sup>3</sup> See MURs 4831/5274 (Nixon) (finding contributions were earmarked where checks contained express designations on memo lines); see also MUR 5732 (Matt Brown for U.S. Senate), MUR 5520 (Republican Party of Louisiana/Tauzin), MUR 5545 (Davis), MUR 4643 (Democratic Party of New Mexico) (rejecting earmarking allegations where there was no evidence of a clear designation, instruction, or encumbrance by the donor), and MUR 5125 (Perry) (finding no earmarking because the complaint contained only bare allegations of earmarking, but showed no designation, instruction, or encumbrance).

<sup>4</sup> See MUR 5445 (Davis) and MUR 4643 (Democratic Party of New Mexico).

August 7, 2017

Page 4

should find no reason to believe Respondents violated the Act by transferring nonfederal funds to the Federal Committee, and making contributions in the name of another.

***Loudermilk Did Not Direct Funds Outside the Limits and Prohibitions of the Act from the State Committee to the Federal Committee***

Under the Act, Federal candidates, their agents, and entities directly or indirectly established, financed, maintained, or controlled by, or acting on behalf of, Federal candidates, may not raise or spend funds in connection with an election for Federal office unless the funds are subject to the Act's limitations, prohibitions, and reporting requirements. 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. § 300.61. Moreover, Federal candidates may not raise or spend funds in connection with any election other than an election for Federal office unless the funds are raised within the Act's contribution limits and are not from prohibited sources. 2 U.S.C. § 30125(e)(1)(B); 11 C.F.R. § 300.62. However, the Commission has stated that "[i]f the funds are not raised or spent in connection with an election, then the funds do not fall within the scope of Section 441i(e)." See Advisory Opinion 2003-20 (Reyes) at 2; see also AO 2009-26 (Coulson).

The Complaint alleges that "[t]he apparent conduit contributions are also impermissible spending of soft money to influence a federal election."<sup>6</sup> However, as previously explained, Loudermilk did not transfer funds from his State Committee to his Federal Committee via conduit contributions, and therefore the funds were not used to influence a federal election. As for the contributions the State Committee made to the state campaigns, there were sufficient federally acceptable funds to cover the amount of the contributions at the time they were made. The Complaint does not provide any evidence to the contrary; it simply concludes that because the State Committee did not provide "evidence" that it used an accounting method then it must have directed money outside the source and amount restrictions of the Act. This is burden shifting, and the Commission has made clear that such burden shifting and speculation is insufficient and does not establish that there is a reason to believe a violation occurred.<sup>7</sup> Due process and fundamental fairness dictate that the burden must not shift to a respondent merely because a complaint is filed with the Commission.<sup>8</sup>

***The State Committee Payments to Mrs. Loudermilk***

In yet another baseless allegation, the Complaint attempts to link payments made to Mrs. Loudermilk for administrative assistance by the State Committee to in-kind contributions she made to the Federal Committee for similar services. Mrs. Loudermilk has provided administrative assistance to the State Committee for years, even dating back to the time when

<sup>6</sup> See Compl at 4.

<sup>7</sup> MUR 5467 (Michael Moore), First General Counsel's Report at 5 ("Purely speculative charges, especially when accompanied by a direct refutation, do not form the adequate basis to find reason to believe that a violation of [the Act] has occurred." (quoting MUR 4960 Statement of Reasons at 3)).

<sup>8</sup> See MUR 4850 (Deloitte & Touche, LLP), Statement of Reasons of Chairman Daryl R. Wold and Commissioners David M. Mason and Scott E. Thomas, at 2 (rejecting OGC's recommendation to find reason to believe because the respondent did not specifically deny conclusory allegations, and holding that "[a] mere conclusory allegation without any supporting evidence does not shift the burden of proof to the respondents")

August 7, 2017

Page 5

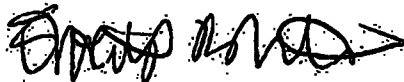
Rep. Loudermilk was a State Representative. When Rep. Loudermilk became a federal candidate, Mrs. Loudermilk began providing similar services to the Federal Committee. Thus, she was providing administrative services to both the State and Federal Committees concurrently until the State Committee was terminated. The payments the State Committee made for her services during this time were consistent with what she had been paid for years. As such, there is no evidence the State Committee improperly subsidized the Federal Committee by paying for her services.

Moreover, the allegation that any of the payments made by the State Committee to Mrs. Loudermilk constitute personal use is meritless. Besides the fact such an allegation is outside the Commission's jurisdiction, the payments were for the administrative work described above. In particular, the final payment the Complaint specifically mentions was to compensate Mrs. Loudermilk for assisting with shutting down and terminating the State Committee, a process which is not just administrative but that also entails disposing of any committee assets and materials. The payments to Mrs. Loudermilk were perfectly legitimate and this allegation should be immediately dismissed.

### **Conclusion**

Loudermilk and the State and Federal Committees have at all times complied with the provisions of the Act. The Complaint draws erroneous legal conclusions based purely on politically motivated speculation. We therefore respectfully request that the Commission find no reason to believe Loudermilk, the State Committee and the Federal Committee violated the Act, and immediately dismiss the Complaint.

Respectfully submitted,



Elizabeth Beacham White